



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDL MNSD

Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act"):

The landlords sought:

- a monetary order for loss, damage and money owed under the tenancy agreement pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenants sought:

- a return of the filing fee pursuant to section 72 of the *Act*; and
- a return of the security deposit pursuant to section 38 of the *Act*.

Both of the tenants, and counsel for the landlord, R.P. attended the hearing. All parties present were given a full opportunity to be heard, to present their testimony and to make submissions.

Both parties acknowledged receipt of each other's applications for dispute and evidentiary package.

Following opening remarks, counsel for the landlords asked if the landlords' application for a monetary award could be amended. Counsel said that the landlords wished to lower the amount they sought to \$1,695.30. As the tenants would not be unfairly prejudiced by this request, I amend the landlords' application pursuant to section 64(3)(c) to reflect this request.

Issue(s) to be Decided

Is either party entitled to a monetary award?

Can the tenants' recover their security deposit? If so, should it be doubled?

Is either party entitled to a return of the filing fee?

Background and Evidence

Undisputed testimony was provided to the hearing by tenant K.M. that this tenancy began on August 21, 2016. Rent was \$2,200.00 per month and a security deposit of \$1,100.00 paid at the outset of the tenancy continues to be held by the landlord.

The tenants are seeking a return of their security deposit, with the penalty under section 38 of the *Act* applied to it. This penalty would provide the tenants with a return of double their security deposit.

The landlords are seeking a monetary award of \$1,695.30. Counsel for the landlords said that this figure represented a fraction of the costs associated with damage which was purported to have occurred during the tenancy. Counsel argued the tenants sub-leased the rental unit without the landlords' written permission, and that the majority of the damage for which the landlords are seeking compensation resulted from the actions of the sub-lessees. Counsel said that the landlords were seeking a return of $\frac{1}{4}$ of the actual costs they incurred and simply wanted damages in recognition of the issues they faced following the conclusion of the tenancy. Following discussions with the landlords, counsel noted that the home was built in 2014 and that the tenants were the first persons to occupy the rental unit. The landlords alleged that the rental unit was new when the tenants first began living in the home.

The tenants disputed the landlords' application. They disagreed with the landlords' assertion that they were the first persons to occupy the rental unit, and tenant L.B. argued that she had seen a note on a window which provided 2013 as the year of completion. Additionally, the tenants noted that no damage to the hardwood floors could have been possible throughout their tenancy because the hardwood floors were covered by a carpet throughout the rental unit. The tenants said that the only portion of the home which was not covered with carpets was a small area next to the sink and stove. L.B. continued by saying that no condition inspection of the rental unit was completed at the conclusion of the tenancy, and she noted that the incoming condition

inspection of the home, completed by the tenants who took over from tenants L.B. and K.M. noted no damage in the rental unit. The tenants acknowledged that some items were left in the rental unit but said they were informed by the landlords that this would be acceptable.

As mentioned previously, in addition to an application from the landlords, the tenants have applied for a monetary award related to a return of their security deposit. The tenants alleged that no condition inspection was performed by the landlords following the conclusion of the tenancy. The tenants said that they provided a copy of their forwarding address to the landlords in writing by way of Canada Post Registered Mail on October 23, 2017. The tenants said that a review of the associated tracking information showed that the package was received by the post office on October 25, 2017 and that the package was eventually picked up by the landlords on November 14, 2017.

Counsel for the landlords agreed that the package was sent by the tenants on October 23, 2017 and collected by the landlords on November 14, 2017 but he argued that the landlords applied to retain the tenants' security deposit on November 22, 2017 and therefore fell within the acceptable timeline to withhold a tenant's security deposit. In addition, counsel argued that the tenants had been provided with several opportunities to meet to perform a condition inspection of the rental unit following the conclusion of the tenancy, but that the tenants had refused their requests and proposals to meet.

Analysis

I will begin by analysing the landlords' application for a monetary award and then turn my attention to the tenants' application for a return of the security deposit.

The landlords have applied for a monetary award of \$1,695.30. The landlords said this figure represented damage that occurred in the rental unit following the departure of sub-leasees who had occupied the home. The landlords said that this figure represented a fraction of the true damages incurred, and that they were simply looking to recover some of their associated loss.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the

agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove their entitlement to a monetary award.

Counsel for the landlords argued that following the conclusion of the tenancy, damage to the floors, the walls, to a cabinet and to an officer chair had occurred. Additionally, the landlords alleged that additional cleaning was required in the rental unit following the conclusion of the tenancy. The tenants disputed the landlords claim, arguing that the rental unit was left in good condition and noting that no damage was noted in condition inspection report completed by the landlords and the subsequent tenants. As part of the landlords' evidentiary packages, several invoices and estimates were included demonstrating the alleged loss. In addition, the landlords supplied several photographs which purported to show damage present in the rental unit.

After having considered the oral testimony of both parties, and after having reviewed all evidence submitted by the parties, I find it evident that some items were left in the rental unit following the conclusion of the tenancy, and that some loss was incurred by the landlords. I accept the submissions of the landlords' counsel which explained that the compensation which is sought by landlords is not a true reflection of the damages incurred but more a recognition of some of the costs which they incurred.

Residential Tenancy Policy Guideline #16 examines the issues of Compensation for Damage or Loss. This *Guideline* notes, "An arbitrator may award monetary compensation only as permitted by the *Act* or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided...An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward." The *Guideline* then continues to note, "Nominal Damages are a minimal award [which may be] awarded where there has been no significant loss or no significant loss has been proven, but it has been proven there has been an infraction of a legal right."

I find that a nominal award of damages would be appropriate in this case, and allow the landlords to recover the entire amount sought in their application for a monetary award of \$1,695.30. The landlords produced sufficient evidence to show that some damage did occur in the rental unit following the conclusion of the tenancy.

I now turn my attention to the tenants' application for a return of their security deposit. The tenants said that no condition inspection was performed by the landlords following the conclusion of the tenancy, and that they send a copy of their forwarding address to the landlords via Canada Post Registered Mail on October 23, 2017. Counsel for the landlords acknowledged that the address was sent this day but stated that the landlords were out of the country and did not have an opportunity to collect the Registered Mail until November 14, 2017. Counsel argued that the landlords applied nearly immediately to retain the tenants' security deposit and should not be punished for having collected the mail containing the tenants forwarding address three weeks after it was sent.

Section 90(a) of the *Act* states, "A document given or served in accordance with section 88 or 89, unless earlier received, is deemed to have been received if given or served by mail, on the 5th day after it is mailed." While the documents were not collected until November 14, 2017, undisputed testimony and evidence was provided by the tenants that their forwarding address was sent to the landlords on October 23, 2017. The landlords are therefore deemed to have been served with this address on October 27, 2017.

Section 38 of the *Act* requires the landlord to either return a tenant's security or pet deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and, or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security or pet deposit. In this case, the landlords had until November 10, 2017 to apply for dispute resolution or return the tenants their security deposit. This provision does not apply if the landlord has obtained a tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

I find no evidence was presented that the landlords had obtained the tenants written authorization to retain all or a portion of the security deposit, and therefore pursuant to section 38 of the *Act*, I find that the tenants are entitled to a monetary award of \$2,200.00 representing a doubling of their security deposit which continues to be held by the landlords.

As both parties were successful in their application, they must each bear the cost of their own filing fee.

Using the offsetting provisions contained in section 72 of the *Act*, I will apply the landlords' monetary award against that given to the tenants.

Conclusion

I issue a Monetary Order of \$504.70 in favour of the tenants as follows:

Item	Amount
Return of Security deposit per section 38 (2 x 1100.00)	\$2,220.00
Less monetary award given to Landlords	(-1,695.30)
Total =	\$504.70

The tenants are provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 27, 2018

Residential Tenancy Branch